

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KEVIN WELLINGTON, *et al.*,

Plaintiffs,

vs.

ROBERT BANNISTER, *et al.*,

Defendants.

3:10-cv-00760-HDM-VPC

ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. On March 1, 2011, this court issued an Order severing the claims of each plaintiff (docket #8). The court directed the Clerk to open separate actions for each plaintiff. Defendants have filed a motion for reconsideration and/or clarification of the court's screening order (docket #9), and plaintiff Ralph Countryman filed a motion to strike the motion for reconsideration (docket #10). The court now considers defendants' motion for reconsideration.

Where a ruling has resulted in final judgment or order, a motion for reconsideration may be construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993), *cert. denied* 512 U.S. 1236 (1994).

1 Under Fed. R. Civ. P. 60(b) the court may relieve a party from a final judgment or order
2 for the following reasons:

3 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
4 discovered evidence which by due diligence could not have been
5 discovered in time to move for a new trial under Rule 59(b); (3) fraud
6 (whether heretofore denominated intrinsic or extrinsic),
7 misrepresentation, or other misconduct of an adverse party; (4) the
8 judgment is void; (5) the judgment has been satisfied, released, or
9 discharged, or a prior judgment upon which it is based has been reversed
10 or otherwise vacated, or it is no longer equitable that the judgment should
11 have prospective application; or (6) any other reason justifying relief
12 from the operation of the judgment.

13 Motions to reconsider are generally left to the discretion of the trial court. *See Combs v. Nick Garin*
14 *Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider, a party
15 must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior
16 decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal. 1986),
17 *aff'd in part and rev'd in part on other grounds* 828 F.2d 514 (9th Cir. 1987). Rule 59(e) of the Federal
18 Rules of Civil Procedure provides that any "motion to alter or amend a judgment shall be filed no later
19 than 28 days after entry of the judgment." Furthermore, a motion under Fed. R. Civ. P. 59(e) "should
20 not be granted, absent highly unusual circumstances, unless the district court is presented with newly
21 discovered evidence, committed clear error, or if there is an intervening change in the controlling law."
22 *Herbst v. Cook*, 260 F.3d 1039, 1044 (9th Cir. 2001), *quoting McDowell v. Calderon*, 197 F.3d 1253,
23 1255 (9th Cir. 1999).

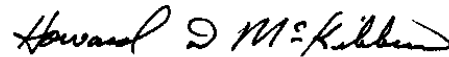
24 In the motion for reconsideration, defendants have presented facts demonstrating that
25 several plaintiffs in this action have previously used what defendants term "creative joinder" in order
26 to circumvent the mandatory filing fee requirements of the Prison Litigation Reform Act. Good cause
appearing, defendants' motion is granted. Plaintiff Ralph Countryman's motion to strike the motion for
reconsideration (docket #10) is denied.

IT IS THEREFORE ORDERED that defendants' motion for reconsideration and/or
clarification of the court's screening order (docket #9) is **GRANTED**.

1 **IT IS FURTHER ORDERED** that plaintiff Countryman's motion to strike motion for
2 reconsideration (docket #10) is **DENIED**.

3 **IT IS FURTHER ORDERED** that the Clerk shall **FILE** a copy of this Order in:
4 *Countryman v. Bannister*, 3:11-CV-00148-HDM-VPC; *Wetzel v. Bannister, et al.*, 3:11-CV-00149-RCJ-
5 VPC; *McIntyre v. Bannister*, 3:11-CV-00150-LRH-RAM; and *Brown v. Bannister, et al.*, 3:11-CV-151-
6 RCJ-VPC.

7 DATED this 28th day of March, 2011.

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11 UNITED STATES DISTRICT JUDGE
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